

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* FIELDS, Minors.

UNPUBLISHED  
November 20, 2014

No. 321885  
Wayne Circuit Court  
Family Division  
LC No. 13-514381-NA

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Before: BORRELLO, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father appeals as of right the trial court order terminating his parental rights to the minor children (DF, who was two years old, and EF, who was 12 months old) under MCL 712A.19b(3)(a)(i), (g), and (j), and respondent-mother appeals the same order terminating her parental rights to the children under MCL 712A.19b(3)(b)(i), (b)(ii), (b)(iii), (g), and (j). We affirm.

I

Respondents lived together in Minnesota for three years. Respondent-mother admitted that she had involvement with Child Protective Services (CPS) there, but claimed many of the allegations were dismissed for lack of evidence. Respondents' relationship was abusive. Respondent-mother admitted that, at some point during their relationship, anything she said would irritate respondent-father and they would end up fighting and eventually the fighting would get physical. Respondent-father hit respondent-mother even when she was holding their child. Respondents both sustained injuries as a result of the continued abuse. Respondents nevertheless denied the existence of domestic violence to CPS. Respondent-mother explained she did not want to risk losing the children. But respondent-mother testified that she completed domestic violence and anger management courses.

In December 2012, respondents moved to Michigan, where they lived with a relative of respondent-father. Their relationship ended in January or February 2013, when respondent-

father returned to Minnesota to secure his social security benefits. Although he planned to return, respondent-mother testified that he failed to do so. EF was born in April 2013. Respondent-father stopped calling in May 2013. Respondent-mother testified that respondent father never sent money, cards, or letters.

Respondent-father has a guardian in Minnesota, who testified that he has bipolar disorder, a traumatic brain injury, and a lack of spinal growth, and requires assistance in making decisions for all the areas of his life such as housing, contracts, medical and personal care. Respondent-father denied having bipolar disorder and instead claimed he has ADHD and fetal alcohol syndrome. The guardian testified that she had observed respondent-father interact appropriately with DF, but she did not believe he had the ability to parent his children on his own—respondent father testified that he “kind of” agreed with Reed. Respondent-father explained that, because he slept through the night, he could not wake up to assist his children when necessary. Respondent-mother similarly testified that she would not feel comfortable leaving the children alone with respondent-father. Although respondent-father lived with his sister, Reed opined that his family may not be reliable to support him, but on the other hand, but if compelled by court order, the state of Minnesota could provide support staff for the family. Respondent-father testified that he had not returned to Michigan to care for his family because Reed would not allow it. Respondent-father admitted that he had used marijuana until early 2014.

In May 2013, respondent-mother met Rythdele Stokes on a dating website and she and her children moved in with him in July 2013. Stokes was on probation for a weapons conviction and he was receiving a disability check for bipolar disorder and schizophrenia. Respondent-mother never saw Stokes take medication and she never knew him to have sought treatment. Respondent-mother testified that Stokes would try to hit her when she said something he did not like. He made contact with her twice—once leaving a red mark around her eye. Respondent-mother testified that she tried to end the relationship repeatedly, but struggled to maintain the separation. She further explained that she never saw Stokes abuse her children.

In August 2013, respondent-mother participated in job training and obtained a job. She testified that Stokes could not watch the children while she was gone because he was obligated to do community service as a condition of his probation. Instead, respondent-mother left her children with Stokes’s friend, Kathy Bunch. Bunch told her she was a licensed daycare provider, but respondent-mother never looked into it. Respondent-mother’s testimony varied regarding why she stopped sending the children to Bunch. She claimed that EF sustained a laceration on his head that was unexplained by Bunch, but she also claimed Bunch stopped watching the children because she was not getting paid and her daycare application was still pending. Afterwards, the children split their time between Stokes and a neighbor, who was unlicensed and whose name respondent-mother testified she could not recall.

While respondent-mother testified that, on September 16, 2013, Stokes cared for the children while she worked from 9:00 a.m. until 3:00 p.m., and that EF was fine when she got home from work, she also testified that, around 4:00 p.m., she took EF to the doctor because he was acting abnormally and seemed clingy. He was prescribed amoxicillin for an infection. That night, EF woke frequently and cried a lot.

On September 17, 2013, respondent-mother left for work at 8:00 a.m., when the children were still sleeping. At around 10:30 a.m., Stokes contacted her at work and said EF was not breathing. Stokes said he had left the baby asleep on a pillow and when he returned, the baby was no longer on the pillow, he was not breathing, and CPR was required. Respondent-mother left work, but no one called 911 until she got home. At the hospital, EF had a seizure and was admitted to the intensive care unit. Dr. Mary Lu Angelilli, a pediatrician specializing in child abuse, examined EF. She opined that he was not using his eyes normally<sup>1</sup> and he had low energy. He had 12 rib fractures, a bruise on his inner thigh, multiple hemorrhages in his brain through a subdural area, and a shearing injury on one of the structures deep inside of the brain. Dr. Angelilli opined that the brain injuries EF had suffered were particular to child abuse. In addition, she noted the great force required to fracture a rib, along with the large number of fractures at varying degrees of healing EF had suffered, and opined that they are indicative of child abuse when there is no other explanation given for their cause. From her review of the case Dr. Angelilli diagnosed a “severe” case of child abuse—all of the injuries were the result of trauma and there was no history provided that would explain the type of trauma that could accidentally cause the injuries. Dr. Angelilli testified that some of the injuries would have to have been caused at different times, and that, therefore, the trauma was caused on multiple occasions.

In light of EF’s injuries, CPS required an exam of DF on September 18. While conducting the examination, Dr. Sarah Albers observed bruising on DF’s face, right flank, and suprapubic region, scratches on his inner thigh, healing abrasions on the forehead at the hairline, two lesions on the lower left jaw, healing scratches and cuts on his lips. Although respondent-mother reported that DF hurt himself on a slide, Dr. Albers opined that some of his injuries were inconsistent with that story and also inconsistent with being an active child.

Respondent-mother testified that she loves her children and would never abuse them, but she believed her children were injured after she began fighting with Stokes. She explained that she finally ended her relationship with Stokes in October 2013, and that she had been in counseling and was willing to participate in services to improve her parenting. However, respondent-mother also began living with a different man in November 2013, and like respondent-father, had continued to use marijuana as late as early 2014.

On September 19, 2013 petitioner signed a permanent custody petition. On March 7, 2014, the trial court concluded there were statutory grounds to terminate respondents’ parental rights, finding that respondent-father had participated in domestic violence, even when the children were present, and that respondent-father had also abandoned the children. In addition, because respondent-father had a guardian, he could not make contractual decisions for his children. The trial court found there was nothing to suggest this condition would change in the near future.

The trial court also believed respondent-mother’s testimony was untruthful, and declined to credit her testimony on any seriously contested matter. The trial court found Dr. Angelilli’s

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<sup>1</sup> EF was legally blind in his left eye due to his injuries.

testimony was compelling and unchallenged and concluded the children were the victims of severe child abuse. It further found that respondent-mother had committed domestic violence in front of her children and then left the children with Stokes, knowing about his weapons charge and mental health issues. The trial court believed these children were never safe and would never be safe in respondent-mother's care.

On April 21, 2014, the trial court held that termination was in the best interests of the children, finding that respondent-father lacked the ability to make decisions regarding the children's best interests, and no plan was made to show what services his family members could make to support him. It further found that there was no circumstance under which the children would ever be safe with respondent-mother because she was not competent to recognize dangerous situations.

## II

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the child.<sup>2</sup> MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 632-633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); MCR 3.902(A); *Miller*, 433 Mich at 337.

## II

In Docket No. 321885, we conclude that termination of respondent-father's parental rights was proper under MCL 712A.19b(3)(g) ("The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.") and (j) ("There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.").

As a result of his disabilities, respondent-father was unable to live independently and required the assistance of a guardian to make sure he attended medical appointments, maintained a job, and paid bills. Respondent-father admitted that he could not properly care for the children by himself. Although respondent-father claims on appeal that his sister and support-services provided by Minnesota could help him parent the children, the guardian testified that

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<sup>2</sup> Neither respondent challenges that trial court's finding that termination of their parental rights was in the children's best interests.

respondent-father could not necessarily rely on family to support him in Minnesota and the trial court found that respondent-father failed to offer evidence of a plan for assistance.

Respondent-father's inability to provide proper care of the children was further demonstrated when he moved to Minnesota in January 2013, leaving DF alone with respondent-mother, who was pregnant with EF and had a history of domestic violence. Respondent-father did not visit (apparently even when EF was born), or otherwise contact them after May 2013. He also failed to provide financial support. Respondent-father's claim on appeal that the trial court erred by failing to acknowledge that he was good with his children is unpersuasive when his actions show minimal commitment to their care.

Thus, given respondent-father's mental health issues, disability, and reliance on a guardian for his own care, the trial court did not err in finding that there was no reasonable expectation that he would be able to provide proper care and custody to his young children within a reasonable time. MCL 712A.19b(3)(g).

The trial court also did not err by finding that the children would be at risk of harm in respondent-father's care. Respondent-father admitted that he had hit and injured respondent-mother while she was holding one of their sons. Rather than taking action to protect the children, respondents both agreed to deny the domestic violence in their relationship when questioned by authorities. In addition to domestic violence, the evidence also showed that respondent-father had been using marijuana until early 2014. Thus, given the history of unaddressed domestic violence and drug use, the trial court did not err by terminating respondent-father's parental rights under MCL 712A.19b(3)(j).

To the extent that the trial court also erroneously relied on MCL 712A.19b(3)(a)(i)<sup>3</sup> though respondent-father was not, in fact, unidentifiable, any error was harmless because only one statutory ground needs to be established. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

### III

In Docket No. 321886, we find that the trial court did not clearly err by finding statutory grounds established to terminate respondent-mother's parental rights to the children under MCL 712A.19b(3)(b)(i) ("The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home."), (b)(ii) (The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home."), (b)(iii) ("A nonparent adult's act caused the

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<sup>3</sup> MCL 712A.19b(3)(a)(i) provides: "The child's parent is unidentifiable, has deserted the child for 28 or more days, and has not sought custody of the child during that period. For the purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent."

physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home."), (g), and (j).

The record shows that both children were the victims of severe physical abuse while in respondent-mother's custody, and respondent-mother provided no explanations that were consistent with the medical findings.

Though respondent-mother blames others for her children's injuries, termination of her parental rights under MCL 712A.19b(3)(b)(i) "is permissible even in the absence of definitive evidence regarding the identity of the perpetrator when the evidence shows that the respondent must have either caused or failed to prevent the child's injuries." *In re Ellis*, 294 Mich App 30, 36-37; 817 NW2d 111 (2011). Given respondent-mother's failure to protect her children and her inability to recognize unsuitable, inappropriate caregivers, there was a reasonable likelihood that the children would suffer injury or abuse in the foreseeable future if placed in the respondent-mother's home and termination of her parental rights was proper under MCL 712A.19b(3)(b)(i), (b)(ii), and (b)(iii).

Termination of respondent-mother's parental rights was also proper under MCL 712A.19b(3)(g) and (j) because respondent-mother is unable to provide proper care and custody of her children and the children would be at risk of harm in her care. Respondent-mother left her children with unsuitable caregivers, including a boyfriend who was abusive to her and had criminal and mental health histories. She also demonstrated an inability to keep them safe and provide proper care and custody by failing to seek immediate medical attention for her children's injuries and using marijuana in early 2014. Respondent-mother's inability to properly care for her children was additionally evident in both of her romantic relationships. She engaged in domestic violence with Stokes and respondent-father—even in front of the children. She also failed to protect her children from future domestic violence by agreeing with respondent-father to deny the domestic violence when questioned by authorities.

Respondent-mother argues that her completion of services in Minnesota in response to a CPS complaint there shows that she would have completed services in this case as well, but her continued inability to impart good maternal judgment, even after receiving services in Minnesota, demonstrates she would be unable to provide proper care and custody to the children within a reasonable time.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Kurtis T. Wilder  
/s/ Cynthia Diane Stephens